Solid Waste Financial Assurance Work Group
August 24, 2011 Meeting Summary

Participants
Dan Batts, Landfill Management
Dawn Cleary, GM
Ken Diehn, NewPage Corporation (conference call)
Stephanie Glysson, Republic Services
Tom Horton, Waste Management
Ray Ilka, GM – SMCO
Dan Kendall, Kent County DPW
Becky Kocsis, DEQ
Dennis Leonard, DTE Energy
Richard Menard, Verso Paper (conference call)
Rhonda Oyer, DEQ
Don Pyle, DSWMA (conference call)
Margie Ring, DEQ
Cortney Schmidt, St. Mary's Cement (conference call)
Kim Smelker, Granger
Kevin Somero, Waste Management
Steve Sliver, DEQ
Kathy Zack, Cornish, Zack, Hill & Associates (conference call)

Meeting Materials
- Draft July 14, 2011, meeting summary.
- Updated Part 115 financial assurance amendments framework (3/25/11)
- Part 115 Amendments, draft for discussion (6/17/11)

Discussion Points
- There were no revisions to the July 14 meeting summary.
- Regarding the May 6 meeting discussion of New Jersey's financial assurance requirement and the assumption that all landfills are all publicly-owned, it was confirmed with New Jersey staff that they have 12 operating landfills: 11 publicly-owned and 1 privately-owned. Approximately 70 percent of over 800 closed landfills were publicly-owned as well.
- Alternative insurance mechanisms are still under investigation. Some offshore insurers may be interested in these lines of coverage. Offshore insurers should be acceptable if they are licensed in Michigan.
- The concept of a percentage bond was discussed. For example, a group of landfills could be covered by a bond in the amount of 25 percent of the total combined amount of financial assurance required for all of the landfills, which could save on premium payments. The state's claim on an individual landfill would still be covered at 100 percent of the closure, postclosure, and corrective action cost. This type of bond might require forming a pool or developing an eligibility list. Private landfills would likely not participate with others in the use of a percentage bond, but it may be a

useful arrangement for municipally-owned landfills. The use of a percentage bond by one company for multiple landfills could be too risky for the state because the potential still remains for needing 100 percent of the combined costs for all landfills in the event of the bankruptcy of the landfill owner. Actual bond language would require review to ensure it meets USEPA requirements under 40 CFR 258.74. Whether it could be tied to some type of financial test should also be considered.

- The concept of using financial assurance requirements to incentivize compliance was discussed. There is concern about how difficult it would be to define good vs. bad behavior. For example, how many of what types of violations would trigger more burdensome financial assurance requirements?
- Discussion of financial test.
  - The deadline for submittal of the corporate financial test is 90 days after the close of the firm's fiscal year. Local government still needs the extended period of 180 days due to the timing of year end financial statements.
  - Type II and commercial Type III landfills should remain subject to demonstrating no more than 70 percent of the required financial assurance with the financial test.
  - Non-commercial (only dispose of waste generated by the owner of the landfill) Type III landfills should be allowed to demonstrate 100 percent of the required financial assurance (except for any required PCF) with a financial test.
- Follow-up questions regarding the financial test:
  - What is the experience of other states that allow the use of the financial test – do firms fail the test soon enough to establish alternative financial mechanisms, or is it too late for them to get a bond, for example, due to their poor financial condition once they fail the test?
  - How do the financial tests under RCRA Subtitles C (Part 111), Subtitle D (Part 115), and Subtitle I (Part 211) compare?
- Discussion of how to replenish the state's perpetual care account (PCA). It was suggested that $10 million might be an appropriate balance, based on recent examples of sites that do not have enough financial assurance to properly close and maintain them. Would landfill operators be willing to transfer a portion of their PCFs to the PCA in turn for having the remaining balances of their PCFs returned to them and the PCF requirement eliminated? How would the PCA be replenished over time if the state needed to use some of the funds for closure and postclosure? How much money is needed over time? Would other types of facilities, licensed or exempt, also contribute to the PCA?
- The next meeting will be scheduled with a Doodle poll.